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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,978

12/15/2003

Mark Steven Franke

KCC 4972 (17,515A)

4244

321 7590 10/11/2007

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

NOTIFICATION DATE

DELIVERY MODE

10/11/2007

ELECTRONIC

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/735,978
Filing Date: December 15, 2003
Appellant(s): FRANKE ET AL.

MAILED

OCT 11 2007

Group 3700

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 22, 2007 appealing from the Office action mailed January 25, 2007.

Art Unit: 3761

(1) Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

U.S. Application Serial No. 10/736,443

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,115,847	ROSCH et al	09-2000
2002/0087137	CHRISTOFFEL et al	07-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosch et al (U.S. Patent No. 6,115,847) in view of Christoffel et al (U.S. Patent Application Publication No. 2002/0087137).

With respect to **Claims 1,4,5,7,16-18,24,25**: Rosch teaches an active wear trunk garment 110 having a liquid-permeable trunk cover 114 having inner surface 111 and outer surface 113 and a waste containment structure 142 comprising a liquid-impermeable backsheet 158 having a garment-facing surface, a liquid-permeable bodyside liner 156 and absorbent core 160 sandwiched therebetween. ('847, Col. 8, lines 8-16) Trunk cover 114 has front waist, rear waist and crotch regions 131,133,149 as can be seen in Figs. 1-4. As can also be seen in Figs. 1-4, waste containment structure 142 is disposed generally within trunk garment 110. Rosch teaches that trunk cover 114 is joined to elastic members 143,145 at the waist regions ('847, Col. 10, lines 45-49), therefore Rosch does not teach that trunk cover 114 is refastenably attached at the front and rear waist regions.

Christoffel teaches a girl's swimsuit wherein an absorbent pant/bottom portion 98 is releasably attached to the upper portion/bodice 42 at the front and rear waist areas via hook

Art Unit: 3761

and loop fasteners 92 to secure the pant portion and upper portion about the waist of the wearer and for greater ease in applying and removing said swimsuit, ('137, ¶¶ 0071-0074) therefore it would be obvious to one of ordinary skill in the art to utilize hook and loop fasteners to releasably and refastenably attach the outer cover 114 and garment 110 taught by Rosch at their respective front and rear waist ends so as to more easily apply and remove garment 110 as taught by Christoffel, such that the absorbent assembly taught by Rosch is selectively detachable from and reattachable to the garment shell.

With respect to **Claim 2**: Rosch teaches leg openings defined by seams 187,189 in cover 114. ('847, Col. 11, lines 1-5) As can best be seen in Fig. 4, garment 110 has leg openings spaced apart inwardly from leg openings defined by cover 114.

With respect to **Claim 3**: Rosch teaches leg elastics 136,138 for pant structure 112. ('847, Col. 12, lines 25,26) Cover 114 is in the form of swimming trunks and as can best be seen in Fig.4 is designed to hang loosely about the legs of the wearer.

With respect to **Claims 6,11**: As can best be seen in Fig. 4, the crotch region of garment 110 is located inwardly of the crotch region 149 of cover 114 and not attached. Further, Rosch teaches cover 114 is configured as a pair of swimming trunks, wherein said trunks, as stated previously are intended to hang loosely about the legs of the wearer, whereas the garment contains leg elastics to fully encircle the legs of the wearer.

Art Unit: 3761

With respect to **Claims 8,9**: As can best be seen in Fig. 4, Rosch teaches that garment 110 has a waist opening defined by waist regions 131 and 133 corresponding to the waist regions of cover 114.

With respect to **Claim 10**: Rosch teaches pant structure 112. ('847, Col. 12, line 5)

With respect to **Claim 12**: The absorbent garment 110 taught by Rosch has a waist opening, at least one outer leg opening, and laterally opposite side seams extending generally from the waist opening to said at least one outer leg opening, the absorbent garment being releasable and refastenable along at least a portion of each of said side seams. (Fig. 5)

With respect to **Claims 13,14**: Since Rosch teaches both non-releasable/refastenable and releasable/refastenable side seams ('847, Col. 11, lines 1-5, 14,15), though Rosch does not teach using them in combination, it would be obvious to one of ordinary skill in the art to modify said side seams so as to contain both refastenable and non-refastenable portions, for example having a non-refastenable portion located above fasteners 96 on each side seam, including a configuration in which the releasable/refastenable portion of each side seam comprises 25-50% of the length of the seam.

With respect to **Claim 15**: Please see the rejection of claim 1 in addition to the following: Rosch teaches that cover 114 has front panel 115 and back panel 121 having side edges 117 and 119 (front) and 123 and 125 (back). ('847, Col. 10, lines 57-65)

Art Unit: 3761

With respect to **Claims 19-21**: Rosch teaches pant structure 112 having left and right side panels 126, 128 respectively that extend from the front waist region 120 to the rear waist region 122. ('847, Col. 12, lines 4-12) Panels 126, 128 are ultrasonically bonded and have non-refastenable seams so as to allow fastening of a front side panel to a corresponding back side panel, thus defining leg openings, as can be seen in Figs. 5, 6. ('847, Col. 12, lines 18-21) As can also be seen in Figs. 5 and 6 pant structure 112 has front and back panel areas in addition to the side panels. In another embodiment shown in Fig. 5, Rosch teaches tape fasteners that are refastenable, thus Rosch teaches that panels 126, 128 could also be releasably and refastenably attached.

With respect to **Claims 22, 23**: Since Rosch teaches that the side panels are elastomeric and are capable of stretching to between 10-500% of their original length ('847, Col. 8, lines 55-60), Examiner is asserting that they are capable of creating an overlap in the range set forth by applicant in claim 23 (thus also falling within the range set forth in claim 22), in both the cases of non-refastenable and refastenable seams.

(10) Response to Argument

Applicant's arguments filed June 22, 2007 have been fully considered but they are not persuasive.

With respect to applicant's argument, beginning at the bottom of page 5, that Rosch teaches that the instant trunk or skirt cover is non-refastenable and thus does not meet the claim limitation of a selectively detachable and reattachable to a garment shell. Applicant cites Col. 14, line 25 – Col. 16, line 57 in support of applicant's position that Rosch is quite clear that the attachment of the absorbent assembly to the cover is non-refastenable. Applicant is referred

Art Unit: 3761

to Col. 16, lines 58-67, wherein Rosch teaches that the instant article can only have one end of the absorbent assembly (waste containment structure 42), which is elastically connected to the cover. Thus Rosch is teaching an embodiment in which an end of the absorbent assembly is not non-refastenably attached to the cover, i.e. it must be refastenably attached.

With respect to applicant's argument that Christoffel does not suggest an article that has components intended to be separated from each other. This argument has been made and responded to fully several times during prosecution. However, as a courtesy, the response given in the final action mailed August 28, 2006:

"With respect to applicant's argument that Christoffel does not provide suggestion to combine, Examiner disagrees and refers applicant to the rejection of claim 1, where Examiner states that since, Christoffel teaches an absorbent pant and teaches hook and loop fasteners at the waist region that connect to another piece having complimentary fasteners at its waist regions. Christoffel teaches that the fasteners facilitate fast and easy removal of the absorbent pant. ('137, ¶¶ 0071-0074) The fact that the other piece is a top or that it is disposable is immaterial. While the term disposable may appear to imply one-time use, such meaning is not guaranteed, therefore Examiner disagrees with applicant's assertion that the suit is used one time and then discarded. The existence of the releasable and reusable fasteners themselves is clear evidence of intent of repeated use of the top portion of the swimsuit." (Christoffel citation added for clarity)

As to applicant's argument that there is no motivation to combine the teachings of Rosch and Christoffel, the Office has illustrated herein that Rosch teaches one refastenable fastener means present to attach the absorbent assembly 42 to the cover. Christoffel teaches an absorbent pant releasably attached to a bodice via fasteners 92 seen in Fig. 18. Christoffel teaches in paragraph 0073 that fasteners 92 are present to facilitate easy removal of the suit. This also has been stated multiple times during prosecution.

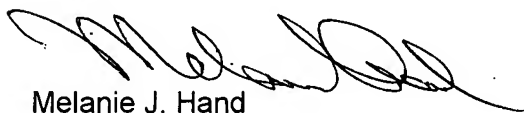
Art Unit: 3761

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Melanie J. Hand

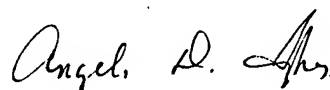
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